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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 01-0170 (US02)

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on January 30, 2008

Signature: Nancy Rushton

Typed or printed Name: Nancy Rushton

Application Number	Filed
10/631,928	July 31, 2003

First Named Inventor: Clifford Teoh et al.

Art Unit	Examiner
3737	Vi X. Nguyen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
  See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
  (Form PTO/SB/96)
- ☒ attorney or agent of record.
  Registration number 37,104
- ☐ attorney or agent acting under 37 CFR 1.34.
  Registration number _____

Signature

David T. Burse
Typed or printed name

408-777-2905
Telephone number

January 30, 2008
Date

☒ *Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	**Group Art Unit:** 3737
Clifford Teoh, et al	**Confirmation No.:** 9672
Serial No.: 10/631,928	**Examiner:** Vi X. Nguyen
Filed: July 31, 2003	
For: EXPANDABLE BODY CAVITY LINER DEVICE	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants respectfully request a pre-appeal brief conference. No amendments are being filed with this request. Therefore, claims 1-7, 9-10 and 12 remain pending in this application. Claims 1-4, 7, 9, 10 and 12 stand rejected under 35 U.S.C. §102 (e) as allegedly being anticipated over U.S. Patent No. 6,346,117 to Greenhalgh ("Greenhalgh"). Claims 1, 3-7, 9-10 and 12 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent No. 5,928,260 to Chin et al ("Chin") in view of Greenhalgh. Applicants respectfully disagree.

Claim rejections under 35 U.S.C. §102 (e)

Independent claim 1, recites an aneurysm assembly comprising a liner having an interior defined by the respective distal and proximal portions of the liner, wherein the distal portion is more permeable than the proximal portion, such that the distal portion preferentially permeates embolics from the interior. Greenhalgh does not disclose each and every element required by the claimed invention, since, no such distinction of permeability between the proximal and distal portion of the liner is disclosed or suggested in said cited reference.

Applicants respectfully disagree with Examiner's statement regarding Greenhalgh: *"the right side of line 54 in fig. 7, definitely has plurality of aperture or gaps which is inherently more permeable than the proximal portion which has smaller perforations"* (page 2 of final office action). Actually, Greenhalgh discloses quite the opposite, since it discloses a braided bag for aneurysm treatment, wherein the bag is configured to be formed by a mesh to achieve a porosity of 80% in the whole braided bag (Col 6, lines 39-68, Figs 3-7). Greenhalgh does not disclose or suggest a different braided pattern or mesh that allows more permeability of the distal portion rather than the proximal portion (Col 9, lines 9-40), it discloses an uniform mesh with same size apertures regardless of the portion of the bag (see Figs. 3,4, 6). Fig. 7 depicts a cut away view or window into the proximal portion of the braided bag that shows its interior (including a view of the wire 32), not a different braided pattern with distinct permeability.

By way of illustration, the embodiments of Figs. 3B and 4 of the application are compared with Figs. 6 and 7 of Greenhalgh, as follows:

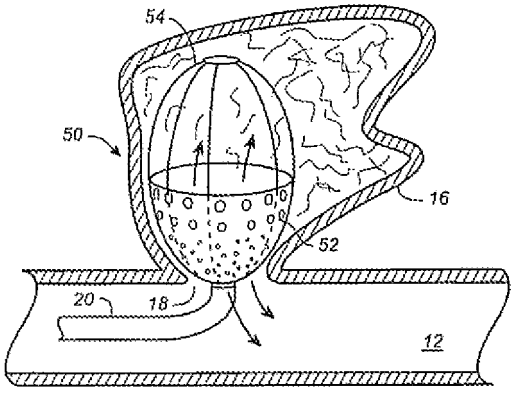

FIG._3B

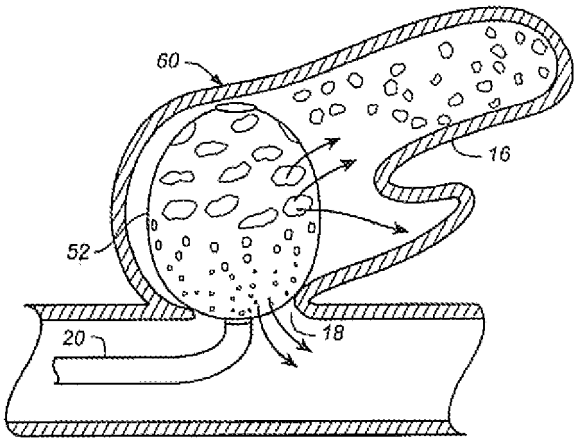

FIG._4

US Appl. No. 10/631,928, liner distal portion is more permeable than the proximal portion, such that the distal portion preferentially permeates embolics from the interior

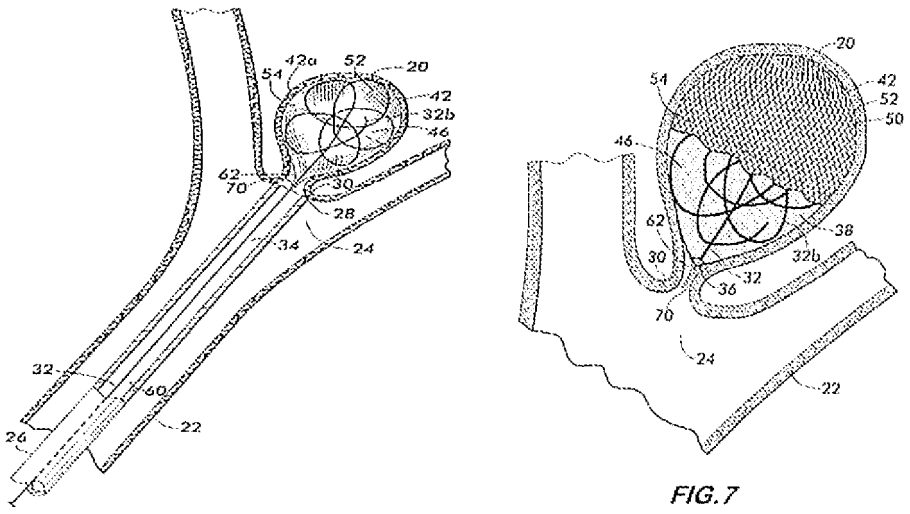

FIG. 7

USPN 6,346,117, braided bag with same size "interstices 52" (Col 9, lines 22-24). Fig. 7, shows a window of the braided bad showing the interior where the wire 32 is located (Col. 9, lines 25-40), not different braided patterns.

For at least these reasons, Applicants respectfully submit that independent claim 1, along with claims 2-4, 7, 9,10 and 12, which depend directly or indirectly from claim 1, are not anticipated by Greenhalgh, and as such, requests withdrawal of the §102 rejection of these claims.

Claim rejections under 35 U.S.C. §103

The Supreme Court set forth the basic test for obviousness in Graham v. John Deere, 383 U.S. 1, 148 (1966)). Additionally, the Supreme Court has recently addressed the issue of obviousness in KSR International vs. Teleflex Inc., 550 U.S. (2007), in which the Court reiterated the requirement that a rejection on obviousness grounds stating that a "fact finder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex parte reasoning. (KSR at page 17 of the slip opinion). While not specifically addressed by the Supreme Court in KSR, "the prior art reference (or references when combined) must teach or suggest all the claim limitations" (MPEP §2143). Additionally, "a prima facie case of obviousness can be rebutted if the applicant . . . can show 'that the art in any material respect taught away' from the claimed invention." (MPEP § 2146). Applicants respectfully submit that Chin in view of Greenhalgh cannot support the obviousness rejection.

Independent claim 1 further recites "an elongated delivery member releasably connected to the liner". No such releasably connected delivery member is disclosed or suggested in Chin. The assembly of Chin is not suitable to be modified in view Greenhalgh to include a releasably connected device from the delivery member. In particular, the neck occlusion device of Chin is configured to be "placed and held over" a neck of an aneurysm to inhibit movement of embolic material out of the aneurysm (Col. 2, lines 21-34), and then after the embolic material remains for a period of time in the aneurysm, the neck occlusion device is removed from the blood vessel, along with the delivery mechanism.

The Chin's occlusion system is removable (Col. 1 lines 6-8), and intended to be positioned and held over the aneurysm neck (not inside of the aneurysm) for a brief period of time, then removed after an embolic material fills in the aneurysm. The neck occlusion device is not released nor intended to be released from the delivery device. (Col 1, lines 6-8, Col 2, lines 26-33, Col 3, lines 8-17, lines 50-52 and 56-58).

A person skill in the art will not modify the device of Chin in view of Greenhalgh to include a releasable device (110 of Fig. 14F) because such modification will teach away from the disclosure of Chin. Consequently, the device described in Chin would be rendered inoperable for its intended purpose by being releasable since if said device would be releasable, it will migrate inside the blood vessel due to blood flow and pressure, which may cause rupture of the same resulting in blood loss and death of the patient.

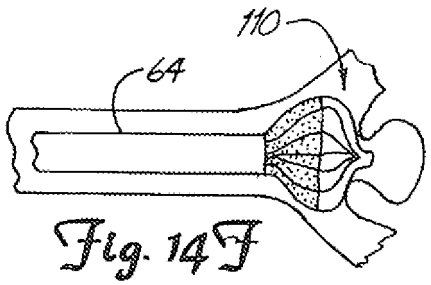

Fig. 14F

USPN 5,928,260, device 110 located at and held over the neck of the aneurysm and intended to be removed.

For at least these reasons, independent claim 1 is believed patentable over the combination of Chin and Greenhalgh. Dependent claims 3-7, 9-10 and 12 are also believed patentable over such combination, for at least the same reasons.

CONCLUSION

For the reasons set forth above, Applicants respectfully submit that currently pending claims are patentable over the cited prior art. A notice of allowance is respectfully requested.

Respectfully submitted,
VISTA IP LAW GROUP LLP

Dated: Jan 30, 2008

By: _____
David T. Burse
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